

## W. M. HURLEY AND JOE WHITSON

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OCTOBER 8 (legislative day, SEPTEMBER 15), 1943.—Ordered to be printed

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MR. TUNNELL, from the Committee on Claims, submitted the following

## REPORT

[To accompany H. R. 2299]

The Committee on Claims, to whom was referred the bill (H. R. 2299) conferring jurisdiction upon the United States District Court for the Eastern District of Arkansas to hear, determine, and render judgment upon the claims of W. M. Hurley and Joe Whitson, having considered the same, report favorably thereon with the recommendation that the bill do pass with the following amendment:

Page 2, line 6, after the word "Act" strike out down to and including the period at the end of line 8, and insert:

in order to recover must be established by evidence of legal liability for negligence according to established principles of law governing the rights of riparian owners along navigable waters where there have been damages claimed because of alleged failure of the Government to maintain public improvements in good order.

The above language is substituted as it is the opinion of the committee that it is attempted to place the Government in its liability for the breakage of dams and the maintenance of dams on the same plane as individuals. The committee are of the opinion that there is no liability on the part of the Federal Government to riparian owners in cases such as this; nor do they believe that the failure to maintain an effective dam by the Federal Government would be negligence on which the riparian owners could recover the damages.

The facts will be found fully set forth in House Report No. 417, Seventy-eighth Congress, first session, which is appended hereto and made a part of this report.

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[H. Rept. No. 417, 78th Cong., 1st sess.]

The Committee on Claims, to whom was referred the bill (H. R. 2299) conferring jurisdiction upon the United States District Court for the Eastern District

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S. Repts., 78-1, vol. 3—7

of Arkansas to hear, determine, and render judgment upon the claims of W. M. Hurley and Joe Whitson, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

The purpose of the proposed legislation is to confer jurisdiction upon the United States District Court for the Eastern District of Arkansas to hear, determine, and render judgment upon, notwithstanding the lapse of time or any provision of law to the contrary, the claims of W. M. Hurley and Joe Whitson, of North Little Rock, Ark., or the claims of either of them, against the United States for damages alleged to have been sustained as a result of the breaking of a dike constructed by the United States Government on the Arkansas River near property belonging to such persons. The bill further provides that any suit brought under it should be instituted within 1 year after the date of enactment, and that the liability of the United States in any suit brought under it shall be determined upon the same principles and measures of liability for negligence as in like cases between private individuals.

In the Seventy-sixth Congress, H. R. 775, an act authorizing payment of the sum of \$500 to W. M. Hurley and the sum of \$1,500 to Joe Whitson, to compensate them for such alleged damages, passed both the House and the Senate but was vetoed by the President, who stated in his veto message that the responsibility of the Government was not manifest.

In the Seventy-seventh Congress, a direct appropriation was not sought, but H. R. 3200, a bill to confer jurisdiction upon the United States District Court to hear, determine, and render judgment upon the claims of W. M. Hurley and Joe Whitson, passed both the House and the Senate, but was also vetoed by the President, who stated in his veto message that—

"The provisions of the bill under consideration are at least ambiguous, as they fail to provide that the Government should be liable only in the event that negligence on its part is shown and are subject to an interpretation that the Government assumes liability for the damages, if they are established, without requiring proof of negligence. Regardless of any other considerations, the court should not be given jurisdiction in such a manner as will enable it to render judgment in favor of the claimants unless it found that there was negligence on the part of the Government which resulted in the property damage."

To meet this objection, the bill now before the Congress contains the following provision:

"The liability of the United States in any suit brought under this Act shall be determined upon the same principles and measures of liability for negligence as in like cases between private individuals."

This provision overcomes the Presidential criticism and requires the claimants to prove the negligence of the Government, as well as the resulting damage to the property of the claimants.

The proposed legislation merely gives the claimants their day in court, where they would have to establish their case against the Government, and your committee feel that they should have the opportunity of presenting their evidence and having it heard and passed upon. As above stated, they would have no greater rights in their presentation of their case against the Government than would be available to them in a suit against private persons, as the same principles and measures of liability for negligence would apply.

Your committee feel that they are entitled to their day in court, and, therefore, recommend favorable consideration of the proposed legislation.

The facts will be found fully set forth in House Report No. 417, Seventy-seventh Congress, first session, which is appended hereto and made a part of this report.

Also appended hereto is message of the President accompanying his veto of H. R. 3200, Seventy-seventh Congress, second session, which is referred to hereinbefore.

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[H. Rept. No. 417, 77th Cong., 1st sess.]

The Committee on Claims, to whom was referred the bill (H. R. 3200) to confer jurisdiction upon the United States District Court for the Eastern District of Arkansas to hear, determine, and render judgment upon the claims of W. M. Hurley and Joe Whitson, having considered the same, report favorably thereon with amendments and recommend that the bill, as amended, do pass.

The amendments are as follows:

Page 1, line 9, before the word "damages" insert "the alleged."

Page 2, line 3, starting with "Sec. 2." strike out the remainder of the bill.

At the end of the bill add: "*Provided*, That suits hereunder shall be instituted at any time within one year after the enactment of this Act."

The purpose of the proposed legislation is to confer jurisdiction upon the United States District Court for the Eastern District of Arkansas to hear, determine, and render judgment upon the claims of W. M. Hurley and Joe Whitson, of North Little Rock, Ark., for damages resulting from the breaking of a dike constructed by the United States Government on the Arkansas River.

In the Seventy-sixth Congress, a bill, H. R. 775, "An act authorizing payment of the sum of \$500 to W. M. Hurley, and the sum of \$1,500 to Joe Whitson" passed both the House and the Senate, but same was vetoed by the President.

The President concluded his veto message by saying: "It has been consistently held by our courts that the Government is not responsible for the consequential effects of such improvements and it is not believed that such a responsibility should now be added to the already heavy cost thereof."

Your committee in considering H. R. 775, Seventy-sixth Congress, felt that the loss suffered by both Mr. Hurley and Mr. Whitson was caused by lack of maintenance of the dike structure, and not due to the impingement of the flood current as contended by the War Department. In considering the present bill, the committee is inclined to believe that they should have a right to go into court, for the reason that, if a private individual owns property adjoining that of others and maintains a dike which is defective and dangerous, and that dike breaks and the impounded waters inundate and flood the property of adjoining property owners, such person would be liable, but, if in the present case, the Government is not liable, and in all fairness to the claimants they should be allowed the right to have the court, after finding the facts, inform them so.

The facts are fully set forth in House Report No. 2217, Seventy-sixth Congress, third session, which is appended hereto and made a part of this report.

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[H. Rept. No. 2217, 76th Cong., 3d sess.]

The Committee on Claims, to whom was referred the bill (H. R. 775) for the relief of W. M. Hurley and Joe Whitson, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendments are as follows:

Strike out all the language in the bill following the enacting clause and insert in lieu thereof the following language:

"That the Secretary of the Treasury be, and he is hereby authorized and directed to pay, out of any money in the Treasury not otherwise appropriated, to W. M. Hurley, of North Little Rock, Arkansas, the sum of \$500; and to Joe Whitson, of North Little Rock, Arkansas, the sum of \$1,500. The said sums shall be accepted in full settlement of all claims against the United States for damages to the property of the said W. M. Hurley and Joe Whitson situated in the city of North Little Rock, Arkansas, as a result of the failure of the United States Government to keep in repair its dike constructed on the Arkansas River nearby the said property: *Provided*, That no part of the amount appropriated in this Act in excess of 10 per centum thereof shall be paid or delivered to or received by any agent or attorney on account of services rendered in connection with this claim, and the same shall be unlawful, any contract to the contrary notwithstanding. Any person violating the provisions of this Act shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not exceeding \$1,000."

Amend the title of the bill to read:

"For the relief of W. M. Hurley and Joe Whitson."

The purpose of the proposed legislation is to pay the sum of \$500 to W. M. Hurley and the sum of \$1,500 to Joe Whitson, both of North Little Rock, Ark., in full settlement of all claims against the United States for damages to their property as a result of the failure of the United States Government to keep in repair its dike constructed on the Arkansas River nearby the said property.

## STATEMENT OF FACTS

The War Department reports identically on both of these claims, stating in part as follows:

"In 1888 a permeable pile dike was constructed at the foot of Locust Street, approximately 300 feet west of Pine Street, as a channel-corrective structure in the maintaining of navigation in the river.

"In 1894 this permeable structure was converted into a solid, riprap-capped dike and considerable riprap bank paving was placed to the east to prevent bank erosion. A survey of this section of the river was made in 1899, which shows the existence, at that time, of the dike and revetment. From 1899 to date no repairs or maintenance work have been performed on this structure. A survey of the riverbank was made in 1937 and comparison between it and the shore line as shown on the map of the 1899 survey indicates an accretion of the bank at the dike of up to about 50 feet, covering the paving.

"On February 16, 1938, a rise in the Arkansas River took place and about February 18, at about stage 21.0 feet on Little Rock gage, an eddy developed in the river between Locust and Pine Streets that rapidly eroded the bank about 250 feet to the east of the dike, necessitating the removal by local interests of Mr. Hurley's residence, two other houses, and three sheds. A survey of the bank and foreshore was made in April 1938, which, when compared with the 1937 survey, indicates a 100-foot recession of the bank for a distance of approximately 300 feet. This caving exposed a small portion of the bank paving placed in 1894.

"Since the rise of February 1938, the water surface of the river has not fallen to a stage where it would be possible to examine the condition of the dike.

"From April 1899 to February 1937 the river has had stages at or above 21 feet on the Little Rock gage on 34 occasions with no resulting damage to the bank below the dike that can be discovered from the available records of this office.

"During recent years the riverbank about 200 feet east of Mr. Hurley's residence was used as a dump for old automobiles and other refuse, thus forming a small dike.

"So far as can be ascertained without detailed examination of the dike, little change in the bank line occurred between April 1899 and February 1938. Regardless of the condition of the dike, the eddy and resulting damage are not considered to have been caused by lack of maintenance of the structure, but to have been due to the impingement of the flood current on the piled refuse below."

However, your committee is in possession of voluminous files in connection with these claims, and all of the testimony presented has been gone into very thoroughly. There is strong evidence in opposition to the contention of the War Department, some of it coming from reputable civil engineers. For instance, Mr. Hugh R. Carter, former assistant engineer of the city of Little Rock, city engineer of Texarkana, Tex., and county engineer of Bowie County, Tex., and who is entirely familiar with the district involved, states in part as follows:

"Many years ago, a dike, approximately 400 feet long, was constructed by the United States Government, at about the foot of Locust Street, in North Little Rock, for the purpose of diverting the current from the north bank of the river. In the 1927 flood, this dike failed approximately 100 feet from the river bank, thus permitting the current to shift from the extreme end of the dike back through the break in the 1938 flood. This shift in current eroded a large section of the river bank between Locust Street and Pine Street, destroying several houses and sheds. This section has been an active bank since 1927 and it is my opinion that if the dike had been repaired after the 1927 flood it would have been sufficient protection and the loss in property would not have occurred. It is true that immediately east of Pine Street a few automobile bodies and tin cans have been dumped on the river bank but not in sufficient number to form any semblance of a dike. It appears that if proper precautionary measures for bank protection had been taken prior to 1938 as has been done since this bank disturbance, no material damage would have occurred.

"I am attaching a general lay-out map showing the bank damage and physical conditions surrounding the point in question as well as kodak pictures.

"In addition to my experience record hereinabove set out, I am an associate member of the American Society of Civil Engineers, a member of the Arkansas Professional Engineers, the Little Rock Engineers Club, and I am registered under the laws of Arkansas."

There is no question regarding the destruction of the claimants' property and, in view of the fact the War Department has only submitted an opinion without



substantiating evidence whereas the claimants are backed up by reputable and qualified persons, your committee recommend passage of the bill, as amended, to provide relief to the claimants. Further facts will be found in the evidence appended hereto in addition to the report of the War Department.

WAR DEPARTMENT,  
Washington, July 14, 1938.

Hon. AMBROSE J. KENNEDY,  
*Chairman, Committee on Claims,*  
*House of Representatives, Washington, D. C.*

DEAR MR. KENNEDY: Further reference is made to your letter of May 23, 1938, requesting information and the opinion of this Department concerning the merits of H. R. 10478, Seventy-fifth Congress, third session, a bill for the relief of W. M. Hurley.

Under the terms of the bill it is proposed to authorize payment of \$500 to W. M. Hurley in full satisfaction of his claim for damages to his property situated in the city of North Little Rock, Ark., alleged to have resulted from the failure of the United States to keep in repair a dike constructed on the Arkansas River.

The residence of W. M. Hurley was located on the left bank of the Arkansas River, in the city of North Little Rock on the west side of Pine Street.

In 1888 a permeable pile dike was constructed at the foot of Locust Street, approximately 300 feet west of Pine Street, as a channel corrective structure in the maintaining of navigation in the river.

In 1894 this permeable structure was converted into a solid, riprap-capped dike and considerable riprap bank paving was placed to the east to prevent bank erosion. A survey of this section of the river was made in 1899, which shows the existence, at that time, of the dike and revetment. From 1899 to date no repairs or maintenance work have been performed on this structure. A survey of the river bank was made in 1937 and comparison between it and the shore line as shown on the map of the 1899 survey indicates an accretion of the bank at the dike of up to about 50 feet, covering the paving.

On February 16, 1938, a rise in the Arkansas River took place and about February 18, at about stage 21.0 feet on Little Rock gage, an eddy developed in the river between Locust and Pine Streets that rapidly eroded the bank about 250 feet to the east of the dike, necessitating the removal by local interests of Mr. Hurley's residence, two other houses, and three sheds. A survey of the bank and foreshore was made in April 1938, which, when compared with the 1937 survey, indicates a 100-foot recession of the bank for a distance of approximately 300 feet. This caving exposed a small portion of the bank paving placed in 1894.

Since the rise of February 1938, the water surface of the river has not fallen to a stage where it would be possible to examine the condition of the dike.

From April 1899 to February 1937, the river has had stages at or above 21 feet on the Little Rock gage on 34 occasions with no resulting damage to the bank below the dike that can be discovered from the available records of this office.

During recent years the river bank about 200 feet east of Mr. Hurley's residence was used as a dump for old automobiles and other refuse, thus forming a small dike.

So far as can be ascertained without detailed examination of the dike, little change in the bank line occurred between April 1899 and February 1938. Regardless of the condition of the dike, the eddy and resulting damage are not considered to have been caused by lack of maintenance of the structure, but to have been due to the impingement of the flood current on the piled refuse below.

The Supreme Court of the United States has held uniformly that riparian ownership on navigable waters is subject to the consequential effects resulting from works of improvement for navigation authorized by Congress and that recovery cannot be had for damages arising from such causes. See *Gibson v. United States* (166 U. S. 269), *Bedford v. United States* (192 U. S. 217), *Transportation Co. v. Chicago* (99 U. S. 635), and *Sanguinetti v. United States* (264 U. S. 146).

The Department has rejected numerous claims of like character on the basis of the precedents cited, and since it is considered that the damage to the property of the claimant was due to natural high water in the Arkansas River, for which no liability attaches to the United States, recommendation is made that the proposed measure be not enacted into law.

Sincerely yours,

MALIN CRAIG,  
*Acting Secretary of War.*

WAR DEPARTMENT,  
Washington, February 11, 1939.

HON. AMBROSE J. KENNEDY,  
Chairman, Committee on Claims, House of Representatives,  
Washington, D. C.

DEAR MR. KENNEDY: Further reference is made to your letter of recent date, transmitting for report a copy of H. R. 776, Seventy-sixth Congress, first session, a bill for the relief of Joe Whitson.

Under the terms of the bill it is proposed to authorize payment of \$1,500 to Joe Whitson in full satisfaction of his claim for damages to his property situated in the city of Little Rock, Ark., alleged to have resulted from the failure of the United States to keep in repair a dike constructed on the Arkansas River.

The residence of the claimant was located on the left bank of the Arkansas River in the city of North Little Rock at the foot of Pine Street.

In 1888 a permeable pile dike was constructed at the foot of Locust Street, approximately 300 feet west of Pine Street, as a channel corrective structure in maintaining navigation in the river.

In 1894 this permeable structure was converted into a solid, riprap-capped dike and considerable riprap bank paving was placed to the east to prevent bank erosion. A survey of this section of the river was made in 1899, which shows the existence, at that time, of the dike and revetment. From 1899 to date no repairs or maintenance work has been performed on this structure. A survey of the river bank was made in 1937 and comparison between it and the shore line as shown on the map of the 1899 survey indicates an accretion of the bank at the dike of approximately 50 feet, covering the paving.

On February 16, 1938, a rise in the Arkansas River took place and about February 18, at approximately stage 21.0 feet on Little Rock gage, an eddy developed in the river between Locust and Pine Streets that rapidly eroded the bank about 250 feet to the east of the dike, necessitating the removal by local interests of Mr. Whitson's residence, two other houses, and three sheds. A survey of the bank and foreshore was made in April 1938, which, when compared with the 1937 survey, indicates a 100-foot recession of the bank for a distance of approximately 300 feet. This caving exposed a small portion of the bank paving placed in 1894.

From April 1899 to February 1937, the river has had stages at or above 21 feet on the Little Rock gage on 34 occasions with no resulting damage to the bank below the dike that can be determined from the records of this Department.

During recent years the river bank about 200 feet east of Mr. Whitson's residence was used as a dump for old automobiles and other refuse, thus forming a small dike.

It is the opinion of this Department that little change in the bank line occurred between April 1899 and February 1938. Regardless of the condition of the dike, the eddy and resulting damage are not considered to have been caused by lack of maintenance of the structure, but to have been due to the impingement of the flood current on the piled refuse below.

The Supreme Court of the United States has held uniformly that riparian ownership on navigable waters is subject to the consequential effects resulting from works of improvement for navigation authorized by Congress and that recovery cannot be had for damages arising from such causes. See *Gibson v. United States* (166 U. S. 269), *Bedford v. United States* (192 U. S. 217), *Transportation Co. v. Chicago* (99 U. S. 635), and *Sanguinetti v. United States* (264 U. S. 146).

The Department has rejected numerous claims alleged to be the consequence of the erection of works of improvement for navigation on the basis of the precedents cited, and since in this case it is considered that the damage to the property of the claimant was not even due to this cause but to natural high water in the Arkansas River, for which no liability attaches to the United States, recommendation is made that the proposed measure be not enacted into law.

Sincerely yours,

HARRY H. WOODRING,  
Secretary of War.

## RE CLAIMS OF JOE WHITSON AND W. M. HURLEY

## AFFIDAVIT

STATE OF ARKANSAS,  
*County of Pulaski, ss:*

Before me, O. D. Longstreth, a notary public in and for the county and State aforesaid, this day personally appeared W. M. Hurley, who, being by me duly sworn, upon oath says:

I was the owner of the property, located at 211 Pine Street, in the city of North Little Rock, Ark., consisting of a lot, 426 by 50 feet, and a house.

During the high water in the Arkansas River in 1938, my property, or so much of it as was left after the floods of 1927 and 1935, was completely washed away. The house was quickly removed, but had to be wrecked; hence I suffered a complete loss of my home.

The direct cause of the destruction was the broken-down condition of the United States Government dike at the foot of Locust Street, the purpose of which had been to divert the waters from the north bank of the river.

This dike broke down completely at about its center during the flood of 1927, and from that time on there has been a constant erosion of the north bank of the river immediately east of the said dike. The Government has failed ever since then until 1939 to make any repairs.

The bank of the river in 1927, east of Locust Street, extended a considerable distance out from the landside or north end of the said Government dike, and my property abutted said dike. The erosion after 1927 was gradual and slow, as the waters washed through the caved-in center of the Government dike.

During the flood of 1935 approximately 75 feet of my lot was carried away into the river with the land immediately adjoining my property to the east.

After said flood a fill or riprap was provided east from the foot of Pine Street, of a thickness of about 10 feet, but my property and the properties of Joe Whitson and J. J. Hamilton still extended about 50 feet beyond the said riprap toward the river.

In 1938 a survey was made for the location of the sea wall. This sea wall was originally to pass my house to the south, then it was changed to pass my house directly at the north, and was again changed farther north. Mr. Frank Groover, of the office of the United States engineers, Little Rock, Ark., and Mr. A. L. Wooten, chairman of the board, informed me that the original surveys had to be changed and abandoned "because the bank is active."

The above said properties lay between the said Government dike and the said fill, and the fact that the properties extended beyond said fill or riprap precludes the possibility that the said rip rap or fill was the cause of the eddy or whirlpool which carried said properties away. As a matter of fact, these properties were washed away before the water could reach the fill.

Had it not been for said fill or riprap at the foot of Pine Street, the destruction would have been much greater, for it prevented the erosion from proceeding farther inland at the foot of Pine Street.

I know of my own personal knowledge that the Government neglected the said dike on Locust Street, made no repairs on it since 1927, and had no boats cleaning out the channel or removing snags for the purpose of keeping the channel open through which the waters could have run off.

All of which, together with the broken-down dike, contributed directly to the destruction of the properties, and all due to the failure and neglect of the United States Government.

W. M. HURLEY.

Subscribed and sworn to before me this the 15th day of March 1940.

[SEAL]

O. D. LONGSTRETH, *Notary Public*.

My commission expires March 25, 1943.

## RE CLAIMS OF JOE WHITSON AND W. M. HURLEY

## AFFIDAVIT

STATE OF ARKANSAS,  
*County of Pulaski, ss:*

Before me, Lissa W. Martin, a notary public in and for the county and State aforesaid, this day personally appeared Joe Whitson, who, being by me duly sworn, upon oath says:



I was the owner of the former property, consisting of a house and large lot, and known as 700 Ferry Street, in the city of North Little Rock, Ark.

W. M. Hurley was the owner of a house and large lot, known as 211 Pine Street, in the city of North Little Rock, Ark., and he was therefore my neighbor. W. M. Hurley is out of the city and is not available at this time to make affidavit, for which reason I am including the facts concerning his property as well as my own.

We lost our homes and properties during the high water in the year 1938, when erosions caused by the waters of the Arkansas River carried our real estate away, necessitating the destruction of our homes which could not be removed to safety before the whole bank collapsed.

The direct cause for the destruction of our properties was the negligence of the United States Government in failing to repair and keep in proper repairs a certain dike, constructed by the said Government at the foot of Locust Street in the city of North Little Rock, Ark.

Said dike was completely destroyed for usefulness during the flood of 1927, as photographs submitted by us as exhibits, together with the filing of our claims for damages, clearly indicate.

Said dike had been constructed for the purpose of diverting the waters from the north bank of the Arkansas River toward the middle of the stream. The destruction of the dike, broken down completely at or near the center, created a channel through which the waters surged or rushed against the north bank of the river, causing the erosion of the high bank and its falling into the river. A large opening in the shore line in the form of a horseshoe now indicates where formerly homes and gardens were located.

But for the negligence of the United States Government in failing to repair the said dike or reconstructing it after the flood of 1927 there would have been no damage and we would still be in possession of our homes. The high water of 1938 was not a flood and the waters did not rise above the bank of the river.

After the damage had been done in 1938, the United States Government proceeded in 1939 to make the necessary repairs on said dike at the foot of Locust Street.

JOE WHITSON.

Subscribed and sworn to before me, this the 5th day of March 1940.

[SEAL]

LISSA W. MARTIN, *Notary Public*.

My commission expires September 22, 1942.

#### RE CLAIMS OF JOE WHITSON AND W. M. HURLEY

##### AFFIDAVIT

STATE OF ARKANSAS,  
*County of Pulaski:*

Before me, O. D. Longstreth, a notary public in and for the county and State aforesaid, this day personally appeared Joe Whitson, who being by me duly sworn, upon oath says:

The statement which I shall make herein is supplemental to my affidavit of the 5th day of March 1940, pertaining to the condition of the United States Government dike at the foot of Locust Street, North Little Rock, Ark., and the conditions of the north bank of the Arkansas River during the high water of 1938, as the result of which I lost my property.

I wish now to refute the statement of the United States War Department in its report to the committee of the House of Representatives, considering the claims of W. M. Hurley and myself, dated July 14, 1938, which has come to our hands but a few days ago.

I wish to state that there never was and there is not now a dike about "200 feet east of W. M. Hurley's residence," as claimed in said report. A riprap or fill of about 10 feet was placed at that location immediately east of Pine Street after the flood of 1935 which flood is not mentioned in the report of the War Department. At that time a considerable portion of my lot was carried into the river. The water rushed through the broken-down Government dike, located at the foot of Locust street, and cutting off a part of the north bank of the river between Locust and Pine Streets to the east at an angle, striking near Pine Street. At this time something like 60 or 70 feet of my land was carried away but my land still protruded south toward the river bed about 60 feet, leaving about 50 feet so protruding after the riprap or fill of 10 feet had been placed.



This riprap or fill in no way obstructed or could obstruct the flow of the water during the high water of 1938, because my property and the properties of J. J. Hamilton and W. M. Hurley still lay between said riprap or fill and the said dike, protruding beyond said fill, as stated above, until our properties were swept away, whereupon said riprap or fill was the one and only protection of the bank, preventing the waters from making further inroads into the properties lying in the path of the waters.

I wish to state distinctly that the riprap or fill never extended beyond the property lines into the river bed and did not form a dike in any sense of the word.

As a matter of fact the north bank of the Arkansas River directly east of the United States Government dike has been active ever since the collapse of said dike during the flood of 1927; but the Government has made no effort to repair said dike or to keep the channel of the river clear, in utter disregard of the lives and properties of the people until after the 1938 high water, after the great damage had been done, when in 1939 the said dike was repaired.

JOE WHITSON.

Subscribed and sworn to before me this the 16th day of March 1940.

[SEAL]

O. D. LONGSTRETH, *Notary Public*.

My commission expires March 25, 1943.

#### AFFIDAVIT

STATE OF ARKANSAS,

*County of Pulaski, ss:*

Before me, Hattie F. Yont, Notary Public in and for the county and State aforesaid, this day personally appeared Hugh R. Carter, who being by me duly sworn, upon oath says:

I am a graduate from the Department of Civil Engineering of the University of Arkansas in the year 1907; that upon graduation I was employed by the city of Little Rock, as assistant engineer, until September 1908, at which time I was appointed city engineer of Texarkana, Tex., and county engineer of Bowie County, Tex. While holding these positions, I was also in private practice and did considerable work for the Red River levee district of Miller County, Ark., as well as necessary drainage and highway construction.

In addition to these engagements, I did a general municipal practice.

In the early part of 1911, I was appointed special paving engineer for the city of Little Rock, and served until my appointment as county engineer of Pulaski County, Ark., in 1912. This position was filled until my appointment as State Highway Engineer of Arkansas, in the fall of 1913. I served in this capacity until April 1919, when I entered private practice.

I have handled, during my term as State highway engineer and in my private practice, numerous drainage, levee, and river projects.

The city of North Little Rock was one of my clients from 1935 until the spring of 1939. During this period of time and prior thereto, I was and am familiar with river conditions along the Arkansas River in the vicinity of North Little Rock.

Many years ago, a dike, approximately 400 feet long, was constructed by the United States Government, at about the foot of Locust Street, in North Little Rock, for the purpose of diverting the current from the north bank of the river. In the 1927 flood, this dike failed approximately 100 feet from the river bank thus permitting the current to shift from the extreme end of the dike back through the break in the 1938 flood. This shift in current eroded a large section of the river bank between Locust Street and Pine Street, destroying several houses and sheds. This section has been an active bank since 1927 and it is my opinion that if the dike had been repaired after the 1927 flood, it would have been sufficient protection and the loss in property would not have occurred. It is true that immediately east of Pine Street a few automobile bodies and tin cans have been dumped on the river bank but not in sufficient number to form any semblance of a dike. It appears that if proper precautionary measures for bank protection had been taken prior to 1938 as has been done since this bank disturbance, no material damage would have occurred.

I am attaching a general layout map showing the bank damage and physical conditions surrounding the point in question as well as kodak pictures.

In addition to my experience record hereinabove set out, I am an associate member of the American Society of Civil Engineers; a member of the Arkansas

Professional Engineers; the Little Rock Engineers Club; and I am registered under the laws of Arkansas.

HUGH R. CARTER.

Subscribed and sworn to before me this 18th day of March 1940.

[SEAL]

HATTIE F. YOUT, *Notary Public*.

AFFIDAVIT

STATE OF ARKANSAS,

*County of Pulaski:*

Before me, O. W. Neely, notary public, in and for the county and State aforesaid, this day personally appeared, Ross L. Lawhon, who, being by me duly sworn upon oath says:

I am the mayor of the city of North Little Rock, State of Arkansas, and I have inspected the pictures known as exhibits A, B, and C, submitted in connection with the claim of Joe Whitson and W. M. Hurley of North Little Rock, Ark., and state that these pictures reflect the true condition of the northern bank of the Arkansas River at the foot of Pine Street, North Little Rock, Ark., and of the dike at the foot of Locust Street, one block west of said Pine Street.

I know of my own personal knowledge that the property of the said Joe Whitson and W. M. Hurley was destroyed by erosion during the high water in February 1938, the direct cause of said erosion being the defective condition of the said dike and which produced swirling waters to form a whirlpool, eating away the ground of the said bank.

I further know of my personal knowledge that the house of Joe Whitson had to be wrecked, it being impossible to move same on account of other houses standing in the street while the house of W. M. Hurley had to be moved. The real property of both parties was completely destroyed.

The said dike was damaged during the flood of 1927 and said dike has not been repaired.

ROSS L. LAWHON, *Mayor*.

Subscribed and sworn to before me this 7th day of December 1938.

[SEAL]

O. W. NEELY, *Notary Public*.

AFFADAVIT

STATE OF ARKANSAS,

*County of Pulaski:*

I, A. L. Wooten, being duly sworn, state on oath:

During the construction of the floodwall along the north bank of the Arkansas River in the city of North Little Rock, Ark., I represented the city in securing the rights-of-way for the floodwall, and during the flood-stage of the river in February of this year, the river-bank at the foot of Pine Street became active to such an extent that quite a bit of the ground washed away or caved into the river at this point, undermining the dwelling of Joe Witson, which was located almost directly in the street at the foot of Pine Street, and lot eight (8), block four (4), of W. H. Taylor's Addition, which was the property of W. M. Hurley and Nell Jones Hurley, his wife, was also washed away.

Photographs attached hereto as exhibits A, B, and C reflect the true condition of the north bank of the Arkansas River at the foot of Pine Street and they show the former location of the said properties of Witson and Hurley.

When the bank became active the caving was so rapid that no time was given for moving the house of Joe Witson, and it was impossible to properly move the residence of Hurley, but an attempt was made to pull it up into the street before it caved into the river.

The Witson house was a total wreck and the method which was necessarily employed in pulling the Hurley house to safety rendered it unusable without wrecking it entirely and reassembling it; the loss on this I would estimate at approximately 80 percent of the value of the property.

The matters stated herein came under my own personal observation and this statement is made from my own personal knowledge of the matters discussed herein.

A. L. WOOTEN.

Subscribed and sworn to before me, a notary public, this 10th day of December 1938.

[SEAL]

O. D. LONGSTRETH, *Notary Public*.

My commission expires March 25, 1939.

IN RE CLAIMS FOR DAMAGES OF JOE WHITSON AND W. M. HURLEY, BOTH OF  
NORTH LITTLE ROCK, ARK.

## STATEMENT OF FACTS

Joe Whitson was the owner of a certain piece of property, consisting of a house and lot, located at 700 Ferry Street, corner Pine Street, North Little Rock, Ark.

W. M. Hurley was the owner of a house, located at 211 Pine Street, situated on a piece of property, 426 feet by 50 feet, North Little Rock, Ark.

Both properties being located on the high north bank of the Arkansas River.

During the high water in the early spring of 1938, their land was washed away.

W. M. Hurley was able to move his house away from the danger zone. Joe Whitson was not able to do likewise on account of the house of W. M. Hurley, and also the house of one Joe J. Hamilton, of 215 South Pine Street, blocking the way.

In consequence thereof the house of Joe Whitson had to be wrecked.

The immediate cause of the destruction of the said properties was the poor condition of a dike which had been constructed by the United States Government for the purpose of diverting the waters from the north bank of the Arkansas River at this location, and thus preventing the erosion of the said north bank at this particular location.

This said dike was seriously damaged during the 1927 flood, when a railroad bridge went down and box cars tore up the dike.

Since then the said dike has been neglected by the Federal Government and no repairs made.

As the direct result of said negligence by the Federal Government, the purpose of the said dike was not only nullified, but the danger to the north bank of the Arkansas River was aggravated, accentuated, and intensified on account of the existence of said neglected dike.

Instead of the waters being diverted from the north bank, said dilapidated dike caused the formation of a whirlpool, which has been pronounced by Col. S. L. Scott, United States district engineer, Little Rock, Ark., as the worst he ever saw.

This whirlpool, produced by the said neglected dike, caused the erosion of the said properties.

The property of the aforesaid Joe J. Hamilton, which was located at 215 South Pine Street, North Little Rock, Ark., and which was also destroyed, had been mortgaged to the Home Owners' Loan Corporation, and since its destruction, the said Joe J. Hamilton has been released of his obligation to the said Home Owners Loan Corporation, and hence to the United States. In addition thereto, he was given permission to retain the lumber of his house which had to be wrecked. In this manner he has received relief from the United States Government.

Joe Whitson lost his house and lot and prays damages in the sum of \$1,500.

W. M. Hurley lost his lot and prays damages in the sum of \$500.

It is not contended that the construction of a dike at said location was the cause of the said erosion of the said property, but the neglect and failure of repair of the said dike, and therefore the United States Government should be as liable for the damage caused by its negligence in the same manner as an individual would be under the same or similar circumstances.

If Maj. Gen. J. L. Schley, Chief of Engineers, in his letter to Hon. David D. Terry, of March 31, 1938, and Col. S. L. Scott, United States district engineer, allege that the Supreme Court has held that the United States is not liable for such damage, they refer to cases which have no bearing on the present case. In fact this writer has not found a single case, parallel and exactly applicable to this case and to the negligence of the United States on account of its failure to keep dikes intact and proper repairs.

## THE LAW

Col. S. L. Scott, United States district engineer, Little Rock, Ark., complied with the writer's request to name the cases on which the Government would rely as precedents. They are as follows: *Jackson et al. v. U. S.* (No. 720, 230 U. S. 1); *Hughes v. U. S.* (Nos. 718 and 719, 230 U. S. 24); *Bedford v. U. S.* (192 U. S. 255); *Gibson v. U. S.* (166 U. S. 269).

The first case cited in some respects suggests a similar, if not like situation, and in these respects is favorable to the present case.



JACKSON ET AL. v. U. S. (230 U. S. 1)

## Quotation:

"Appeal from the Court of Claims to review judgment dismissing the petition in a suit to recover from the United States, of property asserted to have been taken in the course of improving the Mississippi River. \* \* \* Closing up natural outlets for waters, so that in floodtime the force of the current is directed to the channel on the opposite side, resulting in a destruction of private property which would not have occurred had the water been left to flow in its natural course, gives a good cause of action." (Cases cited.)

"The closing of natural outlets for the flow of water, so as to raise the water above its natural level, resulting in the overflow of riparian lands, constitutes a taking for which compensation must be made." (Cases cited.)

HUGHES v. U. S. (230 U. S. 24)

## Quotation:

"1. The building by the Federal Government when improving the navigation of the Mississippi River, of a levee behind a plantation which was thereby placed between the old and the new levee, is not a taking of property for which compensation must be made."

The above deals with the taking of property by building levees, and does not apply to the present case.

"The use of dynamite by a Federal officer in an emergency in order to enlarge an opening in levee along the Mississippi River after the levee had given way, if wrongful, cannot be held to be the act of the United States and therefore affords no ground for holding that the United States had thereby taken for public use the property of a riparian owner damaged by such act."

It is patent that this paragraph does not deal with any question involved in this case.

*Bedford v. U. S.* (192 U. S. 255) deals with overflow and erosion for a period of years due to revetment which did not change the course of the river, and therefore does not apply to the present case.

## Quotation:

"The injury from overflow and erosion to the lands of a riparian proprietor as the result of the action of the Mississippi River through a series of years, is not such a direct consequence of the construction by the Federal Government further up the stream of a revetment along the banks, which did not change the course of the river as it then existed, but operated to prevent further changes, as to make such governmental action a taking of private property for public use within the meaning of the fifth amendment to the Federal Constitution."

*Gibson v. U. S.* (166 U. S. 269).—This case deals with "Obstruction to the use of the landing of a riparian owner," and therefore has no resemblance to the present case.

## Quotation:

"1. Riparian ownership is subject to the obligation to suffer the consequences of the improvement of navigation in the exercise of the dominant right of Government in that regard.

"2. Obstruction to the use of the landing of a riparian owner which is merely incidental to the lawful and proper exercise of governmental power in improving navigation, and which is done without coming into physical contact with the land of the person injured, or taking any part of it, or throwing backwater upon it, or causing contact with it in any way, does not give any right to claim damages from the United States."

The Court in the above case suggests that had backwater been thrown upon claimant's land, there would have been a right to claim damages.

In the present case it was water caused by a whirlpool caused by or produced by the neglected and defective dike, which undermined the bank which formed the property of the petitioners.

It follows therefore that in the cases cited there is not any adverse determination by the United States Supreme Court to the claim of the petitioners herein for damages caused by the negligence of the United States in failing to keep in proper repair the dike which was designed and intended to protect the property in question, but owing to its neglected and dilapidated condition proved to be the direct cause of the destruction of the said property.

Petitioners are poor people. Their homes have been destroyed. They have not the means for litigation, but they seek relief in their great and irreparable loss as far as their own means are concerned and therefore they pray for relief from the United States commensurate with the loss and damage they have suffered.

F. W. A. EIERMANN,  
Attorney for Petitioners.



## RE CLAIMS OF JOE WHITSON AND W. M. HURLEY

## AFFIDAVIT

STATE OF ARKANSAS,  
County of Pulaski:

Before me, Lissa W. Martin, a notary public in and for the county and State aforesaid, this day personally appeared O. M. May, who being by me duly sworn, upon oath says:

The statement which I shall make at this time, is supplemental to my affidavit of March 5, 1940.

I am informed that the War Department under date of July 14, 1938, made a report to the effect that about 200 feet east of W. M. Hurley's home there had been deposited during recent years, automobiles and trash, forming a dike, and that said dike was the cause of the eddies during the high water of 1938, by which the properties of W. M. Hurley and Joe Whitson were eroded.

I live at the very location where said old automobiles and trash were deposited. At the present time my house is located about 20 feet from the edge of the bank.

In 1927, prior to the flood during which the United States Government dike at the foot of Locust Street broke down, my house located at the same spot where it is now, was 374 feet from the edge of the said bank.

After the flood of 1935 my house was approximately 70 feet from the edge of the bank. During this same flood of 1935 a considerable portion of the properties of W. M. Hurley, J. J. Hamilton, and Joe Whitson, as well as my own, were carried away by the waters which tore away the soil at an angle east of the said damaged Government dike. The deepest cut into the bank was at the foot of Pine Street and directly east therefrom where my house is located. Hence the properties of the said W. M. Hurley, J. J. Hamilton, and Joe Whitson, extended further out toward the river than the bank directly in front of my house.

To prevent further erosion at this place, old automobiles and trash were used as a fill or riprap to the extent of about 10 feet.

In 1938 said properties of W. M. Hurley, J. J. Hamilton, and Joe Whitson still extended out toward the river beyond my property until these properties were washed away by the whirlpool, and had it not been for the strengthening of the bank, as aforesaid, in front of my house, the damage would have been much greater.

At no time did said fill or riprap extend beyond the shore line or bank, and therefore there was no dike.

I know of my own personal knowledge that ever since the Arkansas River has been abandoned as a navigable stream, or since about 1916, the United States Government has made no repairs of any kind to protect the bank of the river, and that no effort has been made to clear the channels of the river by the removal of snags, to facilitate the flow or current of the water, and that these are the causes or factors which produced the destruction of the above-said properties.

O. M. MAY.

Subscribed and sworn to before me this the 18th day of March 1940.

[SEAL]

LISSA W. MARTIN, Notary Public.

My commission expires September 22, 1942.

## RE CLAIMS OF JOE WHITSON AND W. M. HURLEY

## AFFIDAVIT

STATE OF ARKANSAS,  
County of Pulaski, ss:

Before me, O. D. Longstreth, a notary public in and for the county and State aforesaid, this day personally appeared H. F. Kendrick, who, being by me duly sworn, upon oath says:

I am the manager of the Standard Ice Co., with office on Main Street, at North Little Rock, Ark. I am the successor of my father, and therefore have been around this location practically all my life. I remember distinctly when about the year 1905 or 1906, the dike at the foot of Locust Street, North Little Rock, was constructed or reconstructed by the United States Government. The material used in the construction of the dike consisted of pilings and rock.

I know from personal observation that during the flood of 1927 this dike broke in two, leaving an opening at about the center.

It was the purpose of this dike to keep the waters of the river from the north bank and to divert them toward the middle of the stream, but ever since 1927 and for some years prior to that time, the United States Government has neglected and failed to keep this dike in repair.

The result of this negligence on the part of the United States Government was that when we had the high water in the year 1938, the said dike could not serve its original purpose. Instead of diverting the waters from the north bank of the river, the break in the dike formed a channel through which the waters surged with great violence, rushing against the north bank, creating a whirlpool, which caused erosion of the north bank, eating and tunneling its way into the shore. As the consequent result the high bank tumbled into the river, causing much property damage.

The homes of Joe Whitson and W. M. Hurley could not be removed to safety and had to be wrecked before the land was swept down the river.

In 1939 the United States Government proceeded to riprap the bank and to repair the said dike.

H. F. KENDRICK.

Subscribed and sworn to before me this the 8th day of March 1940.

[SEAL]

O. D. LONGSTRETH, *Notary Public*.

My commission expires March 25, 1943.

# RE CLAIMS OF JOE WHITSON AND W. M. HURLEY

## AFFIDAVIT

STATE OF ARKANSAS,

*County of Pulaski, ss:*

Before me, Lissa W. Martin, a notary public in and for the county and State aforesaid, this day personally appeared Albert Frederick, who, being by me duly sworn, upon oath says:

I live at 707 Ferry Street, in the city of North Little Rock, Ark., and have resided at above address since 1906. Ferry Street is the first street next to the Arkansas River and I have therefore ample opportunity to know the action of the river and things connected with the river in my vicinity. The United States Government dike at the foot of Locust Street is clearly visible from my home.

This dike was destroyed by the great flood of 1927. It was completely broken down and left a wide gap in about the center of the remnants.

While this dike was in good condition, it prevented the water of the river from washing against the north bank of the river.

After the flood of 1927 the United States Government neglected and failed to make any repairs on the dike above mentioned.

When we had the high water of 1938 the said broken-down dike could not divert the waters from the bank to the middle of the stream, but instead thereof the opening in the center of the dike proved to be a channel through which the waters rushed with tremendous force against the north bank. This force produced a whirlpool which ate away the north bank, carrying it down the river. Where formerly houses stood the earth was eaten away causing a formation like a large horseshoe.

This disaster was caused by the negligence of the United States Government in failing to repair the dike and keeping in repairs.

I know that the properties of Joe Whitson and W. M. Hurley were destroyed at that time by the aforementioned causes.

After the damage was done, the dike was repaired by United States engineers and employees in 1939.

ALBERT FREDERICK.

Subscribed and sworn to before me this the 5th day of March 1940.

[SEAL]

LISSA W. MARTIN, *Notary Public*.

My commission expires September 22, 1942.

## RE CLAIMS OF JOE WHITSON AND W. M. HURLEY

## AFFIDAVIT

STATE OF ARKANSAS,  
County of Pulaski, ss:

Before me, Lissa W. Martin, a notary public in and for the county and State aforesaid, this day personally appeared A. W. Moore, who, being by me duly sworn, upon oath says:

I live at 1101 Arkansas Avenue in the city of North Little Rock, Ark., of which city I am an old settler and citizen. Arkansas Avenue is the second street from the north bank of the Arkansas River, and I am well acquainted with said river and events connected with it.

I know that the United States Government dike, located at the foot of Locust Street was demolished by the flood of the year 1927. Said dike completely collapsed, leaving a wide gap in about the center of it.

This dike had been constructed by the United States Government for the purpose of preventing the waters of the river from washing against the north bank and preventing erosion, but after the flood of 1927 the United States Government neglected and failed to recondition the said dike or make any repairs.

In consequence of the dilapidated condition of the said dike, it could not function to carry out its purpose during the high water of 1938. It could not hold back the waters rushing through the channel of the dike, where it had collapsed in the center. Instead of being a protection of the north bank, this dike proved to be a menace. Rushing through the gap of the dike with tremendous force against the north bank, a whirlpool was created which with great violence ate away the north bank which collapsed and being carried down the river.

Had not the United States Government neglected and failed to keep said dike in repairs, there would have been no damage since the water did not rise above the bank.

I know that Joe Whitson and W. M. Hurley lost their homes as a consequence of the above-described high water.

In 1939 the United States Government finally had the repairs on the dike made.

A. W. MOORE.

Subscribed and sworn to before me this the 5th day of March 1940.

[SEAL]

LISSA W. MARTIN, Notary Public.

My commission expires September 22, 1942.

## RE CLAIMS OF JOE WHITSON AND W. M. HURLEY

To the Honorable Committee on Claims,  
House of Representatives, Washington, D. C.

GENTLEMEN: Through the courtesy of the Honorable D. D. Terry, there has come to me a report of the Acting Secretary of War, dated July 14, 1938, concluding: "The Supreme Court of the United States has held uniformly that riparian ownership on navigable rivers is subject to the consequential effects resulting from works of improvement for navigation authorized by Congress and that recovery cannot be had for damages arising from such causes." Citing cases.

The cases cited refer, according to above statement to damages suffered as result of "improvement for navigation authorized by Congress."

The claims of my clients are not based on damages suffered resulting from improvements, but for damages suffered as the result of the negligence of the United States to maintain and repair a dike which had served well for years to divert the waters from the north bank of the Arkansas River at the location set out in the various affidavits until the said dike broke down during the flood of 1927, thus becoming a menace and the means of destruction, especially during the flood of 1935 and the high water of 1938.

Reference is made to our brief of cases in connection with our petition for damages, which include two of the cases cited by the Acting Secretary of War, to wit: *Gibson v. United States* and *Bedford v. United States*.

In our brief in the case of *Gibson v. United States* (166 U. S. 269), we could now cite a brief paragraph.

"The Court in the above case suggests that had backwater been thrown upon claimants land, there would have been a right to claim damages."

In the case of *Jackson et al. v. United States* (230 U. S. 1), the Court said: "Closing up natural outlets of waters so that in floodtime the force of the current is directed to the channel on the opposite side, resulting in a destruction of private property, which would not have occurred had the water been left to flow in its natural course, gives a good cause of action." (Cases cited.)

The latest case, dealing with a neglected dike, and covering our claim, was decided by the Court of Claims of the United States on May 29, 1939, and is case No. 43177, which has been submitted to your committee heretofore. It is entitled "*Squaw Island Freight Terminal Co. v. The United States*." Recovery was had for \$75,000.

My clients have been and are exceedingly modest in their claims. In reality their damage is more than twice the amount claimed, and if the honorable committee will grant their claims, they will have but a modest beginning toward new homes.

Respectfully submitted.

F. W. A. EIERMANN,  
Attorney for Petitioners.

LITTLE ROCK, ARK., March 18, 1940.

[H. Doc. No. 660, 77th Cong., 2d sess.]

MESSAGE FROM THE PRESIDENT OF THE UNITED STATES RETURNING WITHOUT HIS APPROVAL THE BILL (H. R. 3200) CONFERRING JURISDICTION UPON THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF ARKANSAS TO HEAR, DETERMINE, AND RENDER JUDGMENT UPON THE CLAIMS OF W. M. HURLEY AND JOE WHITSON

To the House of Representatives:

I return herewith, without my approval, H. R. 3200, a bill conferring jurisdiction upon the United States District Court for the Eastern District of Arkansas to hear, determine, and render judgment upon the claims of W. M. Hurley and Joe Whitson.

The bill would confer jurisdiction on the court to adjudicate the claims of W. M. Hurley and Joe Whitson, of North Little Rock, Ark., against the United States for alleged damages resulting from the breaking of a dike constructed by the United States Government on the Arkansas River near property belonging to them.

On October 14, 1940, I withheld my approval from a bill (H. R. 775) authorizing payment of the sum of \$500 to W. M. Hurley and the sum of \$1,500 to Joe Whitson for damages to their property as the result of the alleged failure of the United States to keep in repair a dike constructed on the Arkansas River.

I pointed out in my veto message that in making this improvement for the benefit of navigation the Government did not impliedly contract with adjoining or nearby landowners or assume a moral obligation to keep it in repair and protect them from the consequences of a break, and that it had not been shown that the improvement itself, either directly or indirectly, caused the damage to the property of the claimants but, rather, was the result of unprecedented high river conditions obtaining in February 1938, and the impingement of the flood water due to the dumping of old automobiles and other refuse in the river.

If it is the wish of the Congress that the court be given jurisdiction to pass upon the merits of this case, such jurisdiction should be granted on a basis which would protect the interests of the Federal Government.

The provisions of the bill under consideration are at least ambiguous, as they fail to provide that the Government should be liable only in the event that negligence on its part is shown and are subject to an interpretation that the Government assumes liability for the damages, if they are established, without requiring proof of negligence. Regardless of any other considerations, the court should not be given jurisdiction in such a manner as will enable it to render judgment in favor of the claimants unless it found that there was negligence on the part of the Government which resulted in the property damage.

I regret, therefore, that I find it necessary to withhold my approval from the bill.

FRANKLIN D. ROOSEVELT.

THE WHITE HOUSE, March 11, 1942.



SEVENTY-SEVENTH CONGRESS OF THE UNITED STATES OF AMERICA; AT THE SECOND SESSION, BEGUN AND HELD AT THE CITY OF WASHINGTON ON MONDAY, THE FIFTH DAY OF JANUARY, ONE THOUSAND NINE HUNDRED AND FORTY-TWO

AN ACT Conferring jurisdiction upon the United States District Court for the Eastern District of Arkansas to hear, determine, and render judgment upon the claims of W. M. Hurley and Joe Whitson

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That jurisdiction is hereby conferred upon the United States District Court for the Eastern District of Arkansas to hear, determine, and render judgment upon, notwithstanding the lapse of time or any statute of limitations, the claims of W. M. Hurley and Joe Whitson, of North Little Rock, Arkansas, or the claims of either of them, against the United States for the alleged damages resulting from the breaking of a dike constructed by the United States Government on the Arkansas River near property belonging to such persons: *Provided,* That suits hereunder shall be instituted at any time within one year after the enactment of this Act.

SAM RAYBURN,

*Speaker of the House of Representatives.*

H. A. WALLACE,

*Vice President of the United States and President of the Senate.*

[Endorsement on back of bill:]

I certify that this Act originated in the House of Representatives.

SOUTH TRIMBLE, *Clerk.*

By H. NEWLIN MEGILL.



